

Joseph W. Cotchett (36324)
jcotchett@cpmlegal.com
Steven N. Williams (175489)
swilliams@cpmelgal.com
Matthew K. Edling (250940)
medling@cpmlegal.com
COTCHETT, PITRE & McCARTHY
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

Attorneys for Plaintiff

Lisa I Carteen, (204764)
lcarteen@bakerlaw.com
BAKER & HOSTETLER LLP
12100 Wilshire Blvd., 15th Floor
Los Angeles, CA 90025-7120
Telephone: (310) 820-8800
Facsimile: (310) 820-8859

Bruce O. Baumgartner (0025701) (*Pro Hac Vice*)
bbaumgartner@bakerlaw.com
Robin E. Harvey (0014183) (*Pro Hac Vice*)
rharvey@bakerlaw.com
BAKER & HOSTETLER LLP
312 Walnut Street, Suite 3200
Cincinnati, OH 45202-4072
Telephone: (513) 929-3400
Facsimile: (513) 929-0303

Lee. H. Simowitz, (185728) (*Pro Hac Vice*)
lsimowitz@bakerlaw.com
BAKER & HOSTETLER LLP
1050 Connecticut Avenue, NW, Suite 1100
Washington, DC 20036-5304
Telephone: (202) 861-1500
Facsimile: (202) 861-1783

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NUTS FOR CANDY,

Plaintiff,

v.

GANZ, INC. et al.,

Defendants.

Case No. CV 08-2873 JSW

**STIPULATION AND ~~PROPOSED~~ ORDER
RE: DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

Date: November 14, 2008
Time: 9:00 a.m.
Judge: Hon. Jeffrey S. White
Courtroom: Courtroom 2, 17th Floor

**STIPULATION AND ~~PROPOSED~~ ORDER RE: DEFENDANTS' MOTION
TO DISMISS PLAINTIFF'S COMPLAINT CV 08-2873 JSW**

1 WHEREAS, on June 9, 2008 plaintiff Nuts for Candy filed a complaint in this action
2 [Doc. no. 1];

3 WHEREAS, on August 4, 2008, defendants Ganz, Inc. and Ganz U.S.A. LLC filed a
4 motion to dismiss the complaint [Doc. no. 26];

5 WHEREAS, on August 5, 2008, the Court entered an Order Setting Briefing Schedule on
6 Motion to Dismiss [Doc. no. 28];

7 WHEREAS, on August 14, 2008, the parties submitted a Stipulation and [Proposed]
8 Order to Modify Briefing Schedule on Defendants' Motion to Dismiss Plaintiffs' Complaint
9 [Doc. no. 34];

10 WHEREAS, on August 19, 2008, a Clerk's Notice was entered continuing the hearing
11 date on Defendants' motion to dismiss to November 14, 2008, at 9:00 a.m. [Doc. no. 38];

12 WHEREAS, Plaintiff has advised defendants that it chooses to avail itself of its right to
13 amend its complaint without leave of Court, Fed. R. Civ. Proc. 15(a), *see also Miles v. Dep't of*
14 *Army*, 881 F.2d 777, 781 (9th Cir. 1989) (motion to dismiss is not responsive pleading and does
15 not preclude amendment as of right prior to service and filing of responsive pleading);

16 WHEREAS, Plaintiff has further advised defendants that it intends to file an amended
17 complaint on or before September 10, 2008;

18 WHEREAS, the parties are desirous of maintaining the Case Management Conference set
19 by the Court for September 12, 2008, at 1:30 p.m. [Doc. no. 13];

20 WHEREAS, the parties are desirous of maintaining the hearing schedule previously set
21 by the Court for November 14, 2008, at 9:00 a.m. [Doc. no. 38];

22 IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED

23 Plaintiff shall file an amended complaint on or before **September 10, 2008**;

24 Defendants shall answer, move, or otherwise respond to the amended complaint on or
25 before **October 10, 2008**.

26 In the event a motion is filed in response to the complaint, oppositions and replies shall
27 be filed and served in accordance with Local Civil Rule 7-3 or as ordered by the Court.

1 Dated: August 26, 2008

By: /s/ Matthew K. Edling
MATTHEW K. EDLING
(medling@cpmlegal.com) (CA # 250940)
COTCHETT, PITRE & McCARTHY
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Attorneys for Plaintiff

6 Dated: August 26, 2008

By: /s/ (with permission)
LISA I. CARTEEN
(lcarteen@bakerlaw.com) (CA # 204764)
Baker & Hostetler LLP
12100 Wilshire Blvd., 15th Floor
Los Angeles, CA 90025-7120
Telephone: (310) 820-8800
Attorneys for Defendants GANZ, INC. and
GANZ U.S.A., LLC

13 **ORDER**

14 Based on the foregoing Stipulation of the parties and the facts set forth therein, the Court
15 finds good cause to enter the parties' requested Order.

16 Accordingly, (1) Plaintiff shall file an amended complaint on or before September 10,
17 2008; (2) Defendants shall answer, move, or otherwise respond to the amended complaint on or
18 before October 10, 2008; (3) opposition and reply to any motion filed in response to the amended
19 complaint shall be filed and served in accordance with Civil Local Rule 7-3 or as ordered by the
20 Court; (4) the hearing on any motion filed in response to the amended complaint shall be on
21 November 14, 2008, at 9:00 a.m. in Courtroom 2 on the 17th Floor of the Federal Building, 450
22 Golden Gate Avenue, San Francisco, California, before the HONORABLE JEFFREY S.
23 WHITE.

26 Dated: August 27, 2008


JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE